

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 712

Introduced by Raikes, 25; Engel, 17; Schrock, 38

Read first time January 20, 1999

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to counties; to amend sections 23-114.03 and
2 23-114.05, Reissue Revised Statutes of Nebraska, and
3 section 23-114, Revised Statutes Supplement, 1998; to
4 provide for a temporary zoning; to harmonize provisions;
5 to repeal the original sections; and to declare an
6 emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. In a county which has not adopted a county
2 comprehensive development plan:

3 (1) The county board may adopt temporary zoning. If a
4 planning commission has been appointed in the county, the county
5 board may adopt temporary zoning upon the recommendation of the
6 planning commission;

7 (2) The procedure for adopting temporary zoning is:

8 (a) The county board or planning commission, if one has
9 been appointed:

10 (i) Shall choose zoning regulations from available zoning
11 regulations. Available zoning regulations are the zoning
12 regulations which have been adopted by and are in use in another
13 county in this state, except for the zoning regulations of a county
14 which contains a city of the metropolitan or primary class; and

15 (ii) Shall adopt a resolution which gives public notice
16 of its intention to adopt temporary zoning by adopting one set of
17 available zoning regulations and asks for public comment on the
18 available zoning regulations;

19 (b) A member of the public who wants to give input has
20 thirty days after the notice resolution is adopted to inform the
21 county board or planning commission of his or her support or
22 opposition to any of the sets of available zoning regulations;

23 (c) At the end of the thirty-day period, each member of
24 the county board or the planning commission, if one has been
25 appointed, has ten days to exercise the option of eliminating up to
26 three of the available sets of zoning regulations if at least ten
27 available zoning regulations would remain. If ten would not
28 remain, each member may eliminate two if ten would still remain; or

1 if ten would not remain, each member may eliminate one if ten would
2 still remain. If less than ten would remain if each member
3 eliminated one, the option to eliminate is not available;

4 (d) At the end of the ten-day period, the county board or
5 the planning commission, if one has been appointed, has ten days to
6 review the remaining sets of available zoning regulations; and

7 (e) No later than ten days after the ten-day review
8 period, the county board shall hold a public meeting and may adopt
9 by resolution one of the remaining sets of available zoning
10 regulations as the county's temporary zoning. If the county has a
11 planning commission, the planning commission shall recommend one of
12 the remaining available sets of zoning regulations to the county
13 board at the public meeting.

14 Sec. 2. For temporary zoning adopted pursuant to section
15 1 of this act:

16 (1) In a county in which a planning commission has been
17 appointed, temporary zoning becomes effective upon the completion
18 of the procedure for adopting temporary zoning. In a county in
19 which a planning commission had not been appointed, after the
20 county board has completed the procedure for adopting temporary
21 zoning, such zoning becomes effective upon completion of the
22 appointment of a planning commission;

23 (2) Temporary zoning can be in effect for no more than
24 thirty months;

25 (3) A county can adopt temporary zoning only once; and

26 (4) Any land use existing and lawful at the time
27 temporary zoning is adopted may be continued as a nonconforming use
28 as provided in section 23-173.01.

1 Sec. 3. Section 23-114, Revised Statutes Supplement,
2 1998, is amended to read:

3 23-114. (1) The county board shall have power: (a) To
4 provide for temporary zoning as provided in sections 1 and 2 of
5 this act in counties which have not adopted a comprehensive
6 development plan; (b) to ~~Fe~~ create a planning commission with the
7 powers and duties set forth in sections 23-114 to 23-114.05,
8 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and
9 23-376 and sections 1 and 2 of this act; ~~(b)~~ (c) to make, adopt,
10 amend, extend, and implement a county comprehensive development
11 plan; and ~~(e)~~ (d) to adopt a zoning resolution, which shall have
12 the force and effect of law.

13 (2) The zoning resolution may regulate and restrict: (a)
14 The location, height, bulk, number of stories, and size of
15 buildings and other structures, including tents, cabins, house
16 trailers, and automobile trailers; (b) the percentage of lot areas
17 which may be occupied; (c) building setback lines; (d) sizes of
18 yards, courts, and other open spaces; (e) the density of
19 population; (f) the uses of buildings; and (g) the uses of land for
20 agriculture, forestry, recreation, residence, industry, and trade,
21 after considering factors relating to soil conservation, water
22 supply conservation, surface water drainage and removal, or other
23 uses in the unincorporated area of the county.

24 (3)(a) The county board shall not adopt or enforce any
25 zoning resolution or regulation which prohibits the use of land for
26 a proposed residential structure for the sole reason that the
27 proposed structure is a manufactured home if such manufactured home
28 bears an appropriate seal which indicates that it was constructed

1 in accordance with the standards of the Uniform Standard Code for
2 Manufactured Homes and Recreational Vehicles, the Nebraska Uniform
3 Standards for Modular Housing Units Act, or the United States
4 Department of Housing and Urban Development. The county board may
5 require that a manufactured home be located and installed according
6 to the same standards for foundation system, permanent utility
7 connections, setback, and minimum square footage which would apply
8 to a site-built, single-family dwelling on the same lot. The
9 county board may also require that manufactured homes meet the
10 following standards:

11 (i) The home shall have no less than nine hundred square
12 feet of floor area;

13 (ii) The home shall have no less than an eighteen-foot
14 exterior width;

15 (iii) The roof shall be pitched with a minimum vertical
16 rise of two and one-half inches for each twelve inches of
17 horizontal run;

18 (iv) The exterior material shall be of a color, material,
19 and scale comparable with those existing in residential site-built,
20 single-family construction;

21 (v) The home shall have a nonreflective roof material
22 which is or simulates asphalt or wood shingles, tile, or rock; and

23 (vi) The home shall have wheels, axles, transporting
24 lights, and removable towing apparatus removed.

25 (b) The county board may not require additional standards
26 unless such standards are uniformly applied to all single-family
27 dwellings in the zoning district.

28 (c) Nothing in this subsection shall be deemed to

1 supersede any valid restrictive covenants of record.

2 (4) For purposes of this section, manufactured home shall
3 mean (a) a factory-built structure which is to be used as a place
4 for human habitation, which is not constructed or equipped with a
5 permanent hitch or other device allowing it to be moved other than
6 to a permanent site, which does not have permanently attached to
7 its body or frame any wheels or axles, and which bears a label
8 certifying that it was built in compliance with National
9 Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280
10 et seq., promulgated by the United States Department of Housing and
11 Urban Development, or (b) a modular housing unit as defined in
12 section 71-1557 bearing a seal in accordance with the Nebraska
13 Uniform Standards for Modular Housing Units Act.

14 (5) Special districts or zones may be established in
15 those areas subject to seasonal or periodic flooding, and such
16 regulations may be applied as will minimize danger to life and
17 property.

18 (6) The powers conferred by this section shall not be
19 exercised within the limits of any incorporated city or village nor
20 within the area over which a city or village has been granted
21 zoning jurisdiction and is exercising such jurisdiction. At such
22 time as a city or village exercises control over an unincorporated
23 area by the adoption or amendment of a zoning ordinance, the
24 ordinance or amendment shall supersede any resolution or regulation
25 of the county.

26 Sec. 4. Section 23-114.03, Reissue Revised Statutes of
27 Nebraska, is amended to read:

28 23-114.03. Zoning regulations shall be adopted or

1 amended by the county board only after the adoption of the county
2 comprehensive development plan by the county board and the receipt
3 of the planning commission's specific recommendations or by
4 adopting temporary zoning as provided in sections 1 and 2 of this
5 act. Such zoning regulations shall be consistent with ~~the~~ an
6 adopted comprehensive development plan and designed for the purpose
7 of promoting the health, safety, morals, convenience, order,
8 prosperity, and welfare of the present and future inhabitants of
9 Nebraska, including, among others, such specific purposes as:

- 10 (1) Developing both urban and nonurban areas;
- 11 (2) Lessening congestion in the streets or roads;
- 12 (3) Reducing the waste of excessive amounts of roads;
- 13 (4) Securing safety from fire and other dangers;
- 14 (5) Lessening or avoiding the hazards to persons and
15 damage to property resulting from the accumulation or runoff of
16 storm or flood waters;
- 17 (6) Providing adequate light and air;
- 18 (7) Preventing excessive concentration of population and
19 excessive and wasteful scattering of population or settlement;
- 20 (8) Promoting such distribution of population, such
21 classification of land uses, and such distribution of land
22 development as will assure adequate provisions for transportation,
23 water flowage, water supply, drainage, sanitation, recreation, soil
24 fertility, food supply, and other public requirements;
- 25 (9) Protecting the tax base;
- 26 (10) Protecting property against blight and depreciation;
- 27 (11) Securing economy in governmental expenditures;
- 28 (12) Fostering the state's agriculture, recreation, and

1 other industries;

2 (13) Encouraging the most appropriate use of land in the
3 county; and

4 (14) Preserving, protecting, and enhancing historic
5 buildings, places, and districts.

6 Within the area of jurisdiction and powers established by
7 section 23-114, the county board may divide the county into
8 districts of such number, shape, and area as may be best suited to
9 carry out the purposes of this section and regulate, restrict, or
10 prohibit the erection, construction, reconstruction, alteration, or
11 use of nonfarm buildings or structures and the use, conditions of
12 use, or occupancy of land. All such regulations shall be uniform
13 for each class or kind of land or buildings throughout each
14 district, but the regulations in one district may differ from those
15 in other districts. An official map or maps indicating the
16 districts and regulations shall be adopted, and within fifteen days
17 after adoption of such regulations or maps, they shall be published
18 in book or pamphlet form or once in a legal newspaper published in
19 and of general circulation in the county or, if none is published
20 in the county, in a legal newspaper of general circulation in the
21 county. Such regulations shall also be spread in the minutes of
22 the proceedings of the county board and such map or maps filed with
23 the county clerk. Nonfarm buildings are all buildings except those
24 buildings utilized for agricultural purposes on a farmstead of
25 twenty acres or more which produces one thousand dollars or more of
26 farm products each year.

27 Sec. 5. Section 23-114.05, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 23-114.05. The erection, construction, reconstruction,
2 alteration, repair, conversion, maintenance, or use of any
3 building, structure, automobile trailer, or land in violation of
4 sections 23-114 to 23-114.05, 23-168.01 to 23-168.04, 23-172 to
5 23-174, 23-174.02, 23-373, and 23-376 and sections 1 and 2 of this
6 act or of any regulation made by the county board under such
7 sections shall be a misdemeanor. Any person, partnership, limited
8 liability company, association, club, or corporation violating such
9 sections or any regulation of the county board or erecting,
10 constructing, reconstructing, altering, or converting any structure
11 without having first obtained a permit shall be guilty of a Class
12 III misdemeanor. Each day such violation continues after notice of
13 violation has been given to the offender may be considered a
14 separate offense. In addition to other remedies, the county board
15 or the proper local authorities of the county, as well as any owner
16 or owners of real estate within the district affected by the
17 regulations, may institute any appropriate action or proceedings to
18 prevent such unlawful construction, erection, reconstruction,
19 alteration, repair, conversion, maintenance, or use, to restrain,
20 correct, or abate such violation, or to prevent the illegal act,
21 conduct, business, or use in or about such premises. Any taxpayer
22 or taxpayers of the county may institute proceedings to compel
23 specific performance by the proper official or officials of any
24 duty imposed by such sections or in resolutions adopted pursuant to
25 such sections.

26 Sec. 6. Original sections 23-114.03 and 23-114.05,
27 Reissue Revised Statutes of Nebraska, and section 23-114, Revised
28 Statutes Supplement, 1998, are repealed.

1 Sec. 7. Since an emergency exists, this act takes effect
2 when passed and approved according to law.